

## **ARTICLE 11      ADMINISTRATION AND ENFORCEMENT**

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### **SECTION 11.0 AMENDMENT**

This Bylaw, and all the maps incorporated in it, may be amended as provided in Chapter 40A of the General Laws.

#### **SECTION 11.1 EXECUTION**

The Building Commissioner shall enforce the provisions of this Bylaw as hereinafter provided. No building shall be constructed, altered, moved, or changed in use in the Town without a permit from the Commissioner. Such permit shall be withheld unless such construction, alteration or proposed use is in conformity with all provisions of this Bylaw. Where a Special Permit or Site Plan Review approval is required (pursuant to the provisions of this Bylaw), or where an appeal or petition involving a variance is pending, the Building Commissioner shall issue no such permit except in accordance with the written decision of the appropriate Board.

#### **SECTION 11.2 SITE PLAN REVIEW**

##### **11.20 PURPOSE**

The purpose of this section is to protect the health, safety, convenience and general welfare of the inhabitants of the Town by providing for a review of plans for uses and structures which may have significant impacts, both within the site and in relation to adjacent properties and streets, on pedestrian and vehicular traffic; public services and infrastructure; environmental, unique and historic resources; abutting properties; and community needs.

##### **11.21 APPLICABILITY**

Notwithstanding anything contained in this Bylaw to the contrary, no building permit for construction, exterior alteration, relocation, or change in use except where noted, shall be granted for any use requiring Site Plan Review under Section 3.3, until the provisions of this section have been fulfilled and an application approved by the Planning Board.

Site Plan Review shall be used to judge the appropriateness and impacts of the site development characteristics of a proposed project. Uses for which site plan review is required are permitted uses in accordance with Section 3.3, Table of Uses.

##### **11.22 SUBMISSION PROCEDURE**

11.220 An applicant for site plan review shall file with the Planning Department an application form, fee, the required number of copies the site plan, and any additional information as may be required, in the Planning Board's Rules and Regulations. A copy of the application shall be filed with the Town Clerk.

11.221 The following information shall be filed at the time of application: a site plan, which shall include landscape, utility and drainage information, building elevations, and a traffic study and plan. An application shall not be considered complete until all required information and fees are submitted.

11.222 The Planning Board may waive all or any of the requirements for site plan submittal review and approval.

- 11.223 The exact form and contents of the application, fees, plans and information shall be as required by the Rules and Regulations of the Planning Board. The Board shall adopt, and may periodically amend, after a public hearing, such Rules and Regulations relating to the procedures and administration of this section and such Rules and Regulations shall be on file at the Planning Department and Town Clerk's office.

#### 11.23 REVIEW PROCEDURE

- 11.230 The Planning Board shall transmit copies of the application and site plan to appropriate Town Boards, and departments which may include: the Town Engineer, Fire Chief, Conservation Department, Building Commissioner, Board of Health, Historical Commission, Public Transportation Committee, Leisure Services Commission, and others as necessary. These Boards and departments shall have thirty-five (35) days to report to the Planning Board their findings and recommendations. Failure to report in the allotted time shall constitute approval by that Board or Department of the application submitted.

- 11.231 Notice, including notice to parties of interest, and public hearing shall be done in accordance with the procedures required for Special Permits, as found in Chapter 40A. In addition to the notice requirements of M.G.L. Chapter 40A, the following requirements shall also apply:

In any instance where a Special Permit or Site Plan Review application is filed with the Town and there are tenants or lessees on the property which is the subject of the permit request, the applicant shall provide notice of the permit request to the tenants or lessees of the units by distributing a notice of the request, with the date, time and location of the public hearing, to those tenants or lessees, or by posting notice in one or more common areas such as will likely result in actual notice to tenants or lessees. The applicant shall submit a notarized letter to the permit granting authority stating that this requirement has been met and by what means.

If said notification requirements have been met to the satisfaction of the permit granting authority, a circumstance where individual tenants or lessees fail to receive notification shall not serve to invalidate the public hearing.

- 11.232 The Planning Board, or its designated subcommittee, shall schedule a viewing of the property for the purpose of making an informed decision, unless, pursuant to Section 11.222, the Board judges the change to be insignificant and does not require a visit.

#### 11.24 REVIEW CRITERIA/DESIGN GUIDELINES

The following criteria and guidelines shall be used by the Board in evaluating the site plan and all information submitted as part of the application.

##### 11.240 GENERAL

- 11.2400 Conformance with all appropriate provisions of the Zoning Bylaw and the goals of the Master Plan.
- 11.2401 Protection of Town amenities and abutting properties through minimizing detrimental or offensive actions.
- 11.2402 Protection of abutting properties from detrimental site characteristics resulting from the proposed use, including but not limited to air and water pollution, flood, noise, odor, dust vibration, lights or visually offensive structures or site features.
- 11.2403 Provision of adequate recreational facilities, open space and amenities.

##### 11.241 ENVIRONMENTAL

- 11.2410 Protection of unique or important natural, historic or scenic features.
- 11.2411 Adequacy of proposed methods of refuse disposal

- 11.2412 Ability of proposed sewage disposal and water supply systems within and adjacent to the site to serve the proposed use.
  - 11.2413 Adequacy of the proposed drainage system within and adjacent to the site to handle the increased runoff resulting from the development.
  - 11.2414 Provision of adequate landscaping, including the screening of adjacent residential uses, provision of street trees, landscape islands in the parking lot and a landscape buffer along the street frontage. When a non-residential use adjoins a residential district, an uninterrupted vegetated buffer shall, to the extent feasible, be established and maintained between buildings associated with uses under this section and the nearest residential property boundary. Where natural, undisturbed vegetation already exists on-site prior to site preparation and clearing, the majority of that vegetation may be retained and included as part of the buffer, along with the addition of such new plantings, selective removals, and other management of site plantings as are determined to be necessary to maintaining an effective year-round visual screen. See Section 11.3.
  - 11.2415 Adequacy of the soil erosion plan and any plan for protection of steep slopes, both during and after construction.
  - 11.2416 Protection of adjacent properties by minimizing the intrusion of air and water pollution, flood, noise, odor, dust and vibration through appropriate site and structure design and the use of appropriate design and materials for containment, ventilation, filtering, screening, sound-proofing, sound-dampening and other similar solutions.
  - 11.2417 Protection of adjacent properties by minimizing the intrusion of lighting, including parking lot and building exterior lighting, through the use of cut-off luminaires, light shields, lowered height of light poles, screening or similar solutions. Except for architectural and interior-lit signs, all exterior site lighting shall be downcast and shall be directed or shielded to eliminate light trespass onto any street or abutting property and to eliminate direct or reflected glare perceptible to persons on any street or abutting property and sufficient to reduce a viewer's ability to see. All site lighting, including architectural, sign, and parking lot lighting, shall be kept extinguished outside of those business hours established under an approved site management plan, except for lighting determined to be necessary for site security and the safety of employees and visitors.
  - 11.2418 Protection from flood hazards as stated in Section 3.22, considering such factors as: elevation of buildings; drainage; adequacy of sewage disposal; erosion and sedimentation control; equipment location; refuse disposal; storage of buoyant material; extent of paving; effect of fill, roadways or other encroachment on floor runoff and flow; storage of chemicals and other hazardous substances.
  - 11.2419 Protection of wetlands by building in accordance with the provisions of the Wetlands Protection Act, Chapter 131, Section 40, and the Amherst Wetlands Bylaw.
- 11.242 DESIGN
- 11.2420 Within the B-L, B-VC, B-N, COM, OP, LI and PRP Districts, and any residential zoning district where the project in question occurs within the boundaries of a National Historic Register District, the Permit Granting Authority shall, if it deems the proposal likely to have a significant impact on its surroundings, be permitted to use the design principles and standards set forth in Sections 3.2040 and 3.2041, 1) through 9) to evaluate the design of the proposed architecture and landscape alterations. Within the B-G and abutting B-L districts, and for any Town project within any district, the provisions of Section 3.20, Design Review, shall remain in effect.
  - 11.2421 The development shall be reasonably consistent with respect to setbacks, placement of parking, landscaping and entrances and exits with surrounding buildings and development.

- 11.2422 Building sites shall avoid, to the extent feasible, the impact on steep slopes, floodplains, scenic views, grade changes and wetlands.
- 11.2423 If there is more than one building on the site, the buildings shall relate harmoniously to each other in architectural style, site location and building exits and entrances.
- 11.2424 Screening shall be provided for storage areas, loading docks, dumpsters, rooftop equipment, utility buildings and similar features.

#### 11.243 TRAFFIC/PARKING

- 11.2430 The site shall be designed to provide for the convenience and safety of vehicular and pedestrian movement both within the site and in relation to adjoining ways and properties.
- 11.2431 The location and number of curb cuts shall be such to minimize turning movements, and hazardous exits and entrances.
- 11.2432 The location and design of parking spaces, bicycle racks, drive aisles, loading areas and sidewalks shall be provided in a safe and convenient manner.
- 11.2433 Provision for access to adjoining properties shall be provided as appropriate.
- 11.2434 Where possible, driveways located in commercial and business districts shall be located opposite each other.
- 11.2435 Joint access driveways between adjoining properties shall be encouraged.
- 11.2436 A traffic impact report shall be required, unless waived under Section 11.222. Information required as part of this report shall be as set forth in the Rules and Regulations of the Planning Board.
- 11.2437 When a traffic impact report is required, the proposed development shall comply with the following standards:
  - 1. Level of Service (LOS) at nearby intersections shall not be degraded more than one level as a result of traffic generated by the proposed development, nor shall any nearby intersection degrade below the Level of E.
  - 2. Adjacent streets shall not exceed design capacity at the peak hour as a result of traffic generated by the proposed development.
  - 3. Safety hazards shall not be created or added to as a result of traffic generated by the proposed development.
  - 4. If any of the standards in Section 11.2437 1 - 3 are violated, the applicant shall provide alternative proposals to meet the standards, including but not limited to; reduction in the size of the development, change in proposed uses on the site, contributions to off-site street and intersection improvements or construction of off-site street and intersection improvements.

## 11.25 PLANNING BOARD DECISION

- 11.250 The concurring vote of at least two-thirds (2/3), but not fewer than five (5), of the members of the Board participating and voting shall be required for any decision on a site plan application (abstaining members being considered not to be voting). The Board's written decision shall consist of either:
- 11.2500 Approval of the site plan based on a determination that the proposed project meets all of the requirements of Section 11.2.
  - 11.2501 Denial of the site plan based on a determination that either: a) insufficient information was submitted with the application in order for the Board to adequately review the proposal, or; b) a determination that the project does not meet the requirements of Section 11.2.
  - 11.2502 Approval of the site plan subject to conditions, modifications and reasonable restrictions necessary to ensure compliance with the requirements of Section 11.2. Such conditions may include the following:
    - 11.25020 Controls on location and type of access to the site.
    - 11.25021 Requirements to reduce the traffic impact of the proposed development in accordance with Section 11.243.
    - 11.25022 Requirements to minimize impacts on the capacities of infrastructure serving the site, including but not limited to, water, sewer, storm drains, and sidewalks.
    - 11.25023 Requirements to minimize any environmental degradation during construction.
    - 11.25024 Other conditions designed to ensure compliance with the criteria and guidelines of Section 11.24.
- 11.251 The Planning Board shall render a decision within ninety (90) days of the public hearing and shall file its written decision with the Town Clerk's office and other appropriate parties in accordance with the provisions of MGL Chapter 40A.
- 11.252 For the purpose of securing the performance of all proposed work, including landscaping and off-site improvements, the Board may require any of the following: a performance bond, deposit of money, bank passbook, or letter of credit in an amount determined by the Board to be sufficient to cover the cost of all or any part of improvements required.
- 11.253 Any site plan approval granted under this Section shall expire in two (2) years if substantial construction has not begun by such date.
- 11.254 Violations of the approved site plan or any conditions of approval shall be subject to the provisions of Section 11.45 of the Zoning Bylaw.

## SECTION 11.3 MAINTENANCE OF COMMON AREAS, LANDSCAPING AND IMPROVEMENTS

- 11.30 The recipient of any permit under this Bylaw, or any successor, shall be responsible for maintaining all common areas, landscaping and other improvements or facilities required by this Bylaw or any permit issued in accordance with its provisions. Those areas, improvements, or facilities for which an offer of dedication to the public has been accepted by the appropriate public authority are excluded. Such improvements shall include, but are not limited to, private roads and parking areas, water and sewer lines, passive and active recreational facilities, and vegetation and trees used for screening and landscaping. Such improvements shall be properly maintained so that they can be used in the manner intended. Vegetation and trees indicated on approved site plans shall be replaced if they die or are destroyed.
- 11.31 The minimum planting size for landscape material shall be 1-1/2" caliper for trees and 5 gallon for shrubs. The Amherst Landscaping Guidelines should be used for reference in the preparation of landscape plans.

#### **SECTION 11.4 ENFORCEMENT**

- 11.40 If the Building Commissioner shall be informed or have reason to believe that any provision of this Bylaw or any permit or decision thereunder has been, is being, or is about to be violated, the Commissioner shall make an investigation of the facts, including the inspection of the premises where the violations may exist. Where written complaint is made to the Commissioner, the Commissioner shall take action upon such complaint within 14 days of receipt thereof and shall report such action in writing to the complainant.
- 11.41 If the Commissioner finds no violation or prospective violation, any person aggrieved by said decision, or any officer or Board of the Town, may within 30 days appeal to the Board of Appeals.
- 11.42 If the Commissioner finds a violation or prospective violation, the Commissioner shall give immediate notice in writing to the owner and to the occupant of the premises and shall order the person(s) in lawful control of the premises to cease and desist and refrain from such violation. Any person aggrieved by said decision or, any officer or Board of the Town, may within 30 days appeal to the Board of Appeals.
- 11.43 If after such order, such violation continues and no appeal to the Board of Appeals is taken within 30 days, and Town Manager shall, upon notice from the Building Commissioner forthwith make applications to the Superior Court for an injunction or order restraining the violation and shall take such other action as is necessary to enforce the provision of this Bylaw.
- 11.44 If after action by the Building Commissioner, appeal is taken to the Board of Appeals, and after a public hearing, the Board of Appeals finds that there has been a violation or prospective violation, the Commissioner shall issue an order to cease and desist and refrain from such violation unless such order has been previously issued. If such then continues, the Town Manager shall, upon notice from the Building Commissioner, forthwith make application to the Superior Court for an injunction or order restraining the violation and shall take such other action as may be necessary to enforce this Bylaw.
- 11.45 Any violation of the provisions of this Bylaw, the conditions of a permit granted under this Bylaw, or any decisions rendered by the Zoning Board of Appeals or Planning Board under this Bylaw, shall be liable to a fine of not more than one hundred dollars (\$100.00) for each violation. Each day such violation continues shall be deemed a separate offense.

In addition to the procedures for enforcement as described above, the provisions of this Bylaw, the conditions of a permit granted under this Bylaw, or any decisions rendered by the Zoning Board of Appeals or Planning Board under this Bylaw, may be enforced, by the Building Commissioner, by non-criminal complaint pursuant to the provisions of General Laws, Chapter 40, Section 21D. The fine for any violation disposed of through this procedure shall be one hundred dollars (\$100.00) for each offense. Each day such violation continues shall be deemed a separate offense.

- 11.46 Construction or operations under a building permit or special permit shall conform to any subsequent amendment of this Bylaw unless the use or construction is commenced within a period of six months after issuance of the permit; additionally, in cases involving construction begun within such six-month period, such construction shall be continued through to completion as continuously and expeditiously as is reasonable.